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In re Application of	:	
WU et al.	:	
Application No.: 10/555,669	:	DECISION
PCT No.: PCT/US2004/013756	:	
Int. Filing Date: 05 May 2004	:	
Priority Date: 05 May 2003	:	
Attorney's Docket No.: 26148.1180	:	
For: ANTI-CANCER DNA VACCINE EMPLOYING	:	
PLASMIDS ENCODING SIGNAL SEQUENCE,	:	
MUTANT ONCO-PROTEIN ANTIGEN, AND HEAT	:	
SHOCK PROTEIN	:	

This decision is in response to applicants' "RENEWED PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT UNDER 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 24 June 2008. No petition fee is required.

BACKGROUND

On 05 May 2004, applicants filed international application PCT/US2004/013756, which designated the United States and claimed a priority date of 05 May 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 November 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 November 2005 (05 November 2005 being a Saturday).

On 07 November 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 19 September 2006, the DO/EO/US mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 22 March 2007, applicants filed a response to the NOTIFICATION OF MISSING REQUIREMENTS including, *inter alia*, a declaration of inventors.

On 05 October 2007, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating, *inter alia*, that the response filed 22 March 2007 was acknowledged but that the requirements set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006 had not been met. Specifically, it was indicated that the declaration of inventors filed 22 March 2007 was not in compliance with 37 CFR 1.497(a)-(b) in that an Application Data Sheet (ADS) was required for the declaration submitted. This NOTIFICATION set a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006, whichever was longer. This Notification also noted that no extension of this time limit may be granted under 37 CFR 1.136, but that the period for response set in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006 may be extended under 37 CFR 1.136(a).

On 12 February 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006.

On 12 March 2008, applicants filed a petition to withdraw the holding of abandonment which was properly treated as a petition under 37 CFR 1.181.

On 28 May 2008, a decision was mailed dismissing without prejudice applicants' petition under 37 CFR 1.181. Specifically, it was noted that applicants failed to respond to the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007.

On 24 June 2008, applicants filed the instant renewed petition under 37 CFR 1.181, which was accompanied by an ADS.

DISCUSSION

If applicant can establish nonreceipt of the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A.

The renewed petition indicates that a Power of Attorney and Correspondence Address Indication Form was filed 22 March 2007 but was not processed. This Form is in the application file and is properly executed. Thus, the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007 was sent to the wrong address. Accordingly, there is sufficient evidence of record to establish that the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007 was not received. Accordingly, the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007 and the NOTIFICATION OF ABANDONMENT mailed 12 February 2008 are hereby VACATED.

Declaration of Inventors

The declaration of the inventors filed 22 March 2007 is not in compliance with 37 CFR 1.497(a)-(b). There is a difference in names in the first name of the first-named inventor on the international application between the published international application (Tzyy-Chooou WU) and the declaration of the inventors (Tzyy-Chooou WU). It is not clear if there was a typographical error in the first name of the inventor as indicated in the international application (an acceptable explanation would be required), or if the inventor has changed his name (a petition under 37 CFR 1.182 (see MPEP § 605.04(c)) would be required), or if a change of inventorship is being made from the inventorship of the application as indicated in the international application (a petition under 37 CFR 1.497(d) would be required).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

The Notification mailed 05 October 2007 is VACATED.

The NOTIFICATION OF ABANDONMENT mailed 12 February 2008 is VACATED.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper response. A proper response would be a new oath(s) or declaration(s) properly identifying the first-named inventor (as well as all of the other inventors) and signed by the inventor, or an acceptable explanation of any typographical or transliteration error in the first and middle name of the inventor as indicated in the international application if this is the case, or a petition under 37 CFR 1.182 (see MPEP § 605.04(c)) if the inventor has changed his name, or a petition under 37 CFR 1.497(d) if a change of inventorship is being made from the inventorship of the application as indicated in the international application. Extensions of time under 37 CFR 1.136(a) are available.

Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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PCT Legal Examiner

Application No.: 10/555,669

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